

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

AURORA FINANCIAL GROUP  
INC.,

Plaintiff,

v.

MARY K. TOLLEFSON, et al.,

Defendants.

CASE NO. C20-0297JLR

ORDER GRANTING MOTION  
TO AMEND COMPLAINT

This matter comes before the court on the motion for leave to file a third amended complaint for damages filed by Defendant/Counter Claimant/Third-Party Plaintiff Mary K. Tollefson. (Mot. (Dkt. # 41).) Neither Plaintiff/Counter Defendant Aurora Financial Group Inc. (“Aurora”) nor Third-Party Defendants Freedom Mortgage Corp. (“Freedom”) and McCarthy & Holthus, LLP (“MH”) has filed a response to Ms. Tollefson’s motion. The court has reviewed the motion, the relevant portions of the

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2 record, and the applicable law. Being fully advised, the court GRANTS Ms. Tollefson's  
3 motion.

#### 4 **I. BACKGROUND**

5 On February 24, 2020, after removing this case from King County Superior Court,  
6 Ms. Tollefson filed her original answer, counter claims against Plaintiff Aurora, and  
7 third-party claims against Freedom and MH. (Ans. (Dkt. # 2).) She filed an amended  
8 answer, counter claims, and third-party claims on March 31. (Am. Ans. (Dkt. # 16).)

9 On August 19, 2020, this court granted in part and denied in part Third-Party  
10 Defendant MH's motion to dismiss Ms. Tollefson's third-party claims. (*See generally*  
11 8/19/2020 Order (Dkt. # 30).) The court granted Ms. Tollefson leave to amend most of  
12 the dismissed claims, except for her tort claims based on statements that MH made in the  
13 course of judicial proceedings, which the court dismissed with prejudice. (*See id.* at 26-  
14 27.)

15 On October 8, the court entered an order pursuant to the parties' stipulation  
16 dismissing all of Aurora's claims against all Defendants. (10/8/2020 Order (Dkt. # 39).)  
17 On October 9, the court granted Ms. Tollefson's motion to extend the deadline for her to  
18 file an amended complaint and ordered Ms. Tollefson to file her amended complaint by  
19 no later than October 12. (10/9/2020 Order (Dkt. # 40).)

20 On October 12, Ms. Tollefson filed the instant motion to amend her complaint.  
21 (*See generally* Mot.) In her motion and proposed amended complaint, Ms. Tollefson  
22 changed the caption of this matter to reflect herself as Plaintiff and Aurora, Freedom, and

MH as Defendants. (*Id.* at 1; Prop. 3d Am. Compl (Dkt. # 41-1) at 1.) She also styled her proposed amended complaint as her “third amended complaint” even though she previously had amended her answer and counterclaims only once. (*See* Prop. 3d Am. Compl.; *see also* Ans. & Am. Ans.) In her proposed “third amended complaint,” Ms. Tollefson deleted claims that were either dismissed with prejudice in the court’s August 19, 2020 order or were rendered moot when Aurora reconveyed the duplicate deed of trust that was recorded in error on April 21, 2020. (*See* Mot. at 1; Prop. 3d Am. Compl. at 1, 10-13 (deleting abuse of process claim), 27-29 (deleting slander of title claim), 32-34 (deleting outrage claim).) In addition to adding to or amending her factual allegations against Aurora, Freedom, and MH pursuant to the court’s August 19, 2020 order granting her leave to amend her claims, Ms. Tollefson has added a third count under her Washington Consumer Protection Act claim based on Freedom’s alleged violations of Washington’s Consumer Loan Act, ch. 31.04 RCW. (*See* Prop. 3d Am. Comp. ¶¶ 109-124; *see generally id.*)

## II. ANALYSIS

When the court’s deadline for filing amended pleadings has not passed, the proper standard for considering a motion to amend a complaint is provided by Federal Rule of Civil Procedure 15(a). *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607-08 (9th Cir. 1992)). Rule 15(a)(2) provides that “[t]he court should freely give leave [to amend] when justice so requires.” Fed. R. Civ. P. 15(a)(2).

Here, Rule 15(a) applies because the deadline for amending pleadings is March 24, 2021. (Sched. Ord. (Dkt. # 28).) Because Aurora, Freedom, and MH have not filed

1 papers in opposition to Ms. Tollefson's motion, the court concludes pursuant to the Local  
2 Rules that Aurora, Freedom, and MH have admitted that the motion has merit. Local  
3 Rules W.D. Wash LCR 7(b)(2) ("Except for motions for summary judgment, if a party  
4 fails to file papers in opposition to a motion, such failure may be considered by the court  
5 as an admission that the motion has merit."). Therefore, mindful of Rule 15(a)(2)'s  
6 admonition to "freely give leave to amend when justice so requires," the court grants Ms.  
7 Tollefson's motion to amend.

8 The court, however, must instruct Ms. Tollefson regarding the next steps for filing  
9 her amended complaint. First, Ms. Tollefson unilaterally changed the caption of this  
10 matter in her filings to reflect herself as Plaintiff and Aurora, Freedom, and MH as  
11 Defendants. (*See* Mot. at 1; Prop. 3d Am. Compl. at 1.) A change of caption, however,  
12 requires a court order. Thus, if Ms. Tollefson wishes to change the caption of this matter,  
13 she must file a motion to amend the caption.<sup>1</sup>

14 Second, because the caption has not yet been changed, and because Ms. Tollefson  
15 has previously amended her answer and counterclaims only once, Ms. Tollefson's  
16 proposed "third amended complaint" should be styled as her second amended answer,  
17 counter claims, and third-party claims. Therefore, unless the court grants a motion to  
18 amend the caption, Ms. Tollefson must revise her "third amended complaint" to reflect  
19 the parties' current designations and that the filing is her second amended answer,  
20 counter claims, and third-party claims.

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22 <sup>1</sup> The parties may also file a stipulation and proposed order to change the caption if  
Aurora, Freedom, and MH agree to Ms. Tollefson's proposed change.

**III. CONCLUSION**

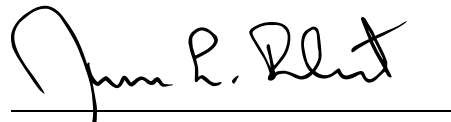
For the foregoing reasons, the court ORDERS as follows:

1. Ms. Tollefson's motion to amend her complaint (Dkt. # 41) is GRANTED.

2. If Ms. Tollefson wishes to amend the caption to reflect that she is the plaintiff in this action and that Aurora, Freedom, and MH are the defendants, she shall file either a motion to amend the caption pursuant to Local Rules W.D. Wash. LCR 7(d)(3) or a stipulated motion to amend the caption pursuant to Local Rules W.D. Wash. LCR 7(d)(1) by no later than November 5, 2020.

3. If Ms. Tollefson moves to amend the caption of this matter, she shall file her second amended complaint by no later than five court days after the court rules on her motion or the parties' stipulated motion to amend the caption. In the alternative, if Ms. Tollefson chooses not to amend the caption of this matter, she shall file her second amended answer, counter claims, and third-party claims by no later than November 5, 2020.

Dated this 29th day of October, 2020.



JAMES L. ROBART  
United States District Judge